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THE TAX LAWYER

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### Thumbnail Tax Guidance For U.S. Taxpayers Abroad

What should you do if you are a dual citizen of the U.S. and another country, living abroad and not compliant with U.S. taxes? There's no easy answer, and this isn't legal advice. But I'll try to suggest a path forward that could make sense.



(Photo credit: Wikipedia)

Perhaps you have **never** filed returns in the U.S. or haven't filed for years. Perhaps you filed but didn't report all your overseas income. Under a new IRS program you may only have to file 3 years of tax returns and 6 FBARs. See [IRS Announces Tax Relief For Dual Citizens And U.S. Citizens](#). Expect details by September 1, 2012.

One key is that you must not owe more than \$1,500 in U.S. taxes per year. A good starting place would be to complete U.S. tax returns (or amended returns) on your worldwide income for the last 3 years. If you are paying tax in the country where you live, you may have foreign tax credits you can claim on your U.S. tax return.

You could take your last 3 years of foreign tax returns to a U.S. tax preparer or try preparing U.S. returns yourself. If you owe \$1,500 or less of U.S. tax per year, you may qualify for the streamlined new IRS program once details become available. If it turns out you owe **more**

than \$1,500 per year, you could prepare U.S. tax returns for the prior 5 years too (meaning 8 in total).

If you consult a U.S. tax adviser armed with this kind of hard data you'll probably be in a better position to get advice. The IRS's streamlined program is evidently designed for U.S. citizens who have been living abroad for at least the last 3 years. The more prevalent IRS program is the Offshore Voluntary Disclosure Program, OVDP. See [New IRS Offshore Amnesty Announced: Third Time's A Charm](#). It involves filing or amending 8 years of U.S. tax returns and filing or amending 8 years of FBARs.

The OVDP involves paying back taxes, interest and a 20% penalty on any income you failed to declare. The more painful element for most participants is the penalty on offshore account balances. See [IRS Offers Carrot And Stick For Offshore Disclosures](#). That penalty is generally 27.5% of the aggregate highest account balance in the offshore accounts over the last 8 years. Some participants find that their highest account balance was in 2005 or 2006 before the recession, and that the account balance may thereafter have dropped precipitously.

Whatever you do, read as much as you can and get some independent advice about your situation.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*